UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

VETERAN CARE CENTERS OF OREGON[1]

Employer

and Case 36-RD-1654

JEANETTE CANTRELL, an Individual

Petitioner

and

UNITED STEELWORKERS OF AMERICA,
DISTRICT 11

Union

**REGIONAL DIRECTOR'S DECISION AND ORDER DISMISSING PETITION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions.[3]

## I. SUMMARY

The Employer is a non-profit corporation that operates a nursing home in The Dalles, Oregon, where the Union represents a unit of nonprofessional employees. Petitioner filed the instant petition seeking an election among those employees. The Union asserts, however, that the petition is barred by a collective-bargaining agreement that was negotiated and ratified prior to the filing of the instant petition. The Petitioner contends that the contract does not bar the petition because it was never signed and never fully implemented by the parties. Despite being requested to take a position by my Order remanding this case for a supplemental hearing, the Employer has not taken any position whether the collective-bargaining agreement bars the petition. Based on the record as a whole, I conclude that the ratified collective-bargaining agreement satisfies the Board's contract-bar requirements and therefore find that the instant petition should be dismissed.

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[1] The Employer's name appears as corrected by the parties at the hearing.

[2] No party filed briefs in this matter.

[3] The hearing officer's rulings made at the hearings are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

Below, I have set forth the record evidence relating to the contract bar issue, a brief restatement of the parties' positions, an analysis of applicable Board law, a conclusion, an order dismissing the petition, and the procedures for requesting review of this decision.

## II. EVIDENCE

The Employer, a non-profit corporation, operates a nursing care facility in The Dalles, Oregon pursuant to funding received from the Federal Department of Veterans Affairs. After its parent corporation was awarded the contract to operate the facility pursuant to a bidding process, the Employer assumed operation of the facility around October 1, 2003. The Union has represented a bargaining unit of nonprofessional employees at the nursing home facility since its certification by the Board in July 2001. The unit includes all full-time and regular part-time nonprofessional employees employed by the Employer at the facility, but excludes all other employees, including registered nurses, managers, guards, and supervisors as defined by the Act. There are approximately 114 to 120 employees in the bargaining unit. The previous employer and the Union negotiated a collective-bargaining agreement covering these unit employees that expired on September 30, 2004.[4]

When it assumed operation of the facility, the Employer honored the terms of the collective-bargaining agreement and thereafter began negotiations with the Union in the summer of 2004 for a successor agreement. James Woodward, the Union's Subdistrict Director, represented the Union during the negotiations, and attorney Rick Van Cleave represented the Employer. On June 2, the Employer and the Union exchanged their initial bargaining proposals. By the following day, the parties had reached agreement on several issues, which they noted in writing on the proposals. On July 8 and 9 the parties met again and reached agreement on a number of economic and noneconomic issues that had been proposed. On July 19, Van Cleave sent an e-mail with an attachment to Woodward that set forth the Employer's response to the Union's July 9 proposals on those issues where the parties had not reached agreement. Following further discussions between the parties, Van Cleave sent Woodward a September 8 e-mail in which the Employer agreed to a one-year agreement effective October 1 and set forth the Employer's position on the remaining unresolved economic issues. When the parties met again on September 20, they discussed the Union's response to the September 8 proposal and the Employer verbally presented another proposal on the remaining unresolved issues. Van Cleave sent an e-mail to Woodward on September 21 that set forth in writing the Employer's verbal offer from the previous day. The Union presented this written offer to the employees, but the membership rejected the offer in a September 30 vote.

Following employees' rejection of the September 21 proposal, the parties had further discussions. On October 12, Van Cleave sent an e-mail to Woodward that set forth the Employer's revised offer. The e-mail, which included Van Cleave's name and e-mail address, stated that the revised offer was a package proposal and specifically noted that it also included all items that the parties had tentatively agreed to in their prior written proposals. The e-mail further stated that the revised offer was contingent on Woodward and the Union recommending it to the membership. Woodward thereafter notified Van Cleave that he was presenting the Employer's October 12 offer to the membership for a

[4] All dates are in 2004 unless otherwise noted.

ratification vote on November 4.[5] When that offer was presented to the membership for ratification, there were no unresolved issues between the parties.

The membership voted to ratify the agreement on November 4. On the following day, Woodward placed a call to Van Cleave's office to inform him of the ratification. As Van Cleave was not present because he was in the hospital, Woodward left a voice mail message stating that the membership had ratified the agreement. When Woodward had not received a reply by November 9, Woodward sent Van Cleave an e-mail listing his name and various contact phone numbers. The e-mail reiterated that the Union had ratified the agreement and asked Van Cleave to contact him about proof reading, signing, and printing the final agreement. Van Cleave testified that he read Woodward's November 9 e-mail message before November 23. He also responded to Woodward by e-mail message the next day.[6] On the morning of November 12, Woodward sent Van Cleave another e-mail, in which Woodward complained about an alleged misrepresentation by Van Cleave during contract negotiations concerning the ability of the Employer to offer health care coverage to unit employees and stated that the Union might have to file an unfair labor practice charge[7]. Van Cleave responded to Woodward by e-mail a few minutes later. Van Cleave's e-mail stated that Woodward should file a charge if he wanted to, but that "[a]s far as [Van Cleave was] concerned we have a deal." Van Cleave testified that the 'deal" in his e-mail referred to the new collective-bargaining agreement the Employer and the Union had reached.

The Employer has implemented some of the terms of the final agreement, including the wage increase. On January 12, 2005, the Petitioner filed the instant petition.

## III. POSITIONS OF THE PARTIES

The Union contends that the new contract, which was offered and accepted pursuant to printed e-mails, bars further processing of the petition. The Petitioner asserts that the contract does not bar the petition because it was neither signed nor fully implemented, and that I should therefore direct an election. Despite being requested to take a position, the Employer has refused to take a position whether the contract-bar rule applies here, and whether I should process or dismiss the petition

## IV. ANALYSIS

The sole issue before me is whether a collective-bargaining agreement, which was the product of a completed negotiation process and whose terms were offered and accepted through written e-mails, constitutes a contract that bars the instant petition. I find that the contract meets the Board's contract bar requirements, and therefore find that the instant petition should be dismissed.

The Board's contract-bar rule is designed to achieve "a finer balance between the statutory policies of stability in labor relations and the exercise of free choice in the

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[5] Woodward testified that he had advised Van Cleave of the ratification vote by e-mail and Van Cleave testified that Woodward had advised him that the offer was being sent to the membership for a ratification vote in the first week of November. This e-mail was not introduced into evidence at the hearing.

[6] The record is silent concerning the content of Van Cleave's November 10 reply.

[7] Although the Union complained about alleged misrepresentation by the Employer about its ability to offer health care coverage, I note that it did not attempt to alter the terms of the agreement. Thus, I find that this complaint did not constitute a disagreement over the terms of the agreement reached.

selection or change of bargaining representatives." *Appalachian Shale Products Co.*, 121 NLRB 1160, 1161 (1958). The "Board has discretion to apply a contract bar or waive its application consistent with the facts of a given case, guided overall by [its] interest in stability and fairness in collective-bargaining agreements." *Madelaine Chocolate Novelties,* 333 NLRB 1312 (2001) (quoting *Direct Press Modern Litho, Inc.,* 328 NLRB 860, 861 (1999).

In order to bar an election under the contract-bar rule, a contract must meet certain formal and substantive requirements. The contract must contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship and both parties must sign the contract prior to the filing of the petition that it would bar. *Seton Medical Center*, 317 NLRB 87 (1995). This requirement "does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance." *Pontiac Ceiling & Partition Co.,* 337 NLRB 120, 123 (2001). The documents relied on to meet those requirements, however, must clearly set out the terms of the agreement and leave no doubt that they amount to an offer and acceptance of those terms. *Branch Cheese*, 307 NLRB 239 (1992); *Georgia Purchasing, Inc*., 230 NLRB 1174 (1977). The absence of an execution date contained in the documents does not disqualify the contract as a bar if the date of execution precedes the filing of the challenging petition and that date can be established. *Cooper Tavles & Welding Corp.,* 328 NLRB 759 (1999). The party that alleges the existence of a contract bar bears the burden of proving it. *Roosevelt Memorial Park*, 187 NLRB 517 (1970).

Contrary to the Petitioner's position, I do not find that the absence of a signed contract between the Employer and the Union negates a contract-bar finding here. The Board has not construed the signature requirement as strictly as the Petitioner requests that I do here. In *Television Station WVTV,* 250 NLRB 198 (1980), for example, the Board found that the initialing of documents constituted a sufficient signature for contract-bar purposes. In a case that is quite similar to the present one, the Board found that the written offer and acceptance of a contract by telegrams between the parties was sufficient to bar a petition filed after the parties had reached agreement. *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977). There, the Union sent a telegram to the employer detailing the terms of the agreement that had been reached except for one provision that the parties had not agreed to. Following receipt of the telegram, the union and employer reached verbal agreement on the remaining term. The employer then sent the Union a written telegram confirming the existence of the collective-bargaining agreement under the terms of the Union's telegram. A written memorandum memorializing the parties' agreement was not signed until after a decertification petition was filed. The Board concluded that the written offer and acceptance by telegram, which incorporated the agreements reached by the parties, was sufficient to bar the petition.

I find that the rationale in *Georgia Processing* is applicable here as well. Instead of a telegram, the Employer used an e-mail that referenced the parties' agreement and set forth the terms of the Employer's revised offer. The Union, in turn, accepted that offer by notifying the Employer in a November 9 e-mail that the employees had ratified the agreement. Van Cleve acknowledged the Union's acceptance of the offer in his November 12 e-mail in which he stated that the parties had a "deal." Like the telegrams in the *Georgia Processing* case, the e-mails were written and identified the parties' negotiators by name. I find no legitimate reason to distinguish between a written e-mail and a telegram. An e-mail today is tantamount to a telegram and is widely recognized as

satisfying the requirement for the filing of documents.[8] Thus, I conclude that the exchange of printed e-mails that identified the negotiators' names is sufficient to satisfy the contract-bar rule's signature requirement in the circumstances of this case.

I also find as lacking in merit the Petitioner's contention, that the contract-bar rule should not apply because the Employer has not implemented all of the terms of the agreement. Whether the parties have implemented the terms of the agreement is not relevant to determining whether the contract serves to bar a petition. *Branch Cheese,* 307 NLRB 239, 240 fn. 4 (1992); *Appalachian Shale Products*, 121 NLRB 1160, 1162 (1958). Finally, I conclude that the Employer and Union's agreement contained substantial terms and conditions of employment to apply the contract-bar rule here. The Union introduced numerous documents revealing the parties' agreements on the terms of their new agreement, including contract duration, prior to the filing of the instant petition.

In light of the above and the record as a whole, I find that the Employer and Union had signed off on a new agreement covering the bargaining-unit employees and serving to bar the instant petition that was filed nearly two months later.

## V. CONCLUSION

On the basis of the foregoing, I find that the contract reached by the Employer and the Union bars the processing of the instant petition. Accordingly, I shall dismiss the petition.

## VI. ORDER

The petition is dismissed.

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on April 12, 2005**.** The request may **not** be filed by facsimile.

**DATED** at Seattle, Washington this 29th day of March 2005.

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
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[8] Indeed, the Board now permits the filing of many documents by e-mail pursuant to its E-Filing project.